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6 Attorneys for Plaintiff
COURTNEY GORDON, an individual,
on behalf of herself and those similarly situated

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

11 COURTNEY GORDON, an individual,
on behalf of herself and those similarly
situated,

CASE NO: C 08-01543 WHA

JOINT CASE MANAGEMENT STATEMENT

Plaintiff-Petitioner.

DATE: July 17, 2008
TIME: 11:00 a.m.
DEPT: Courtroom 9, 19th Floor
PLACE: 450 Golden Gate Ave
San Francisco, California

15 CITY OF OAKLAND, a Municipal Corporation, and DOES 1 through 50, inclusive.

Defendant-Respondent

19 The parties hereby submit this Joint Case Management Conference Statement.

20 || 1. JURISDICTION AND SERVICE

21 Plaintiff alleges jurisdiction under Title 29 U.S.C. §201, et seq. Plaintiff's claims arise
22 from her employment as a police officer for the City of Oakland, and specifically for two acts
23 plaintiff asserts contravene the Fair Labor Standards Act, ("FLSA").

24 Service of process has been completed on the City. The City has successfully moved
25 to dismiss the complaint, but the Court granted the plaintiff leave to file a motion to amend
26 and a proposed First Amended Complaint. This motion is presently set for July 17, 2008 in
27 before this Court.

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1 2. FACTS

2 Plaintiff claims that the City of Oakland requires it hires new police officer trainees
 3 ("POTs") to execute a "Conditional Offer of Employment as an Oakland Police Officer,"
 4 ("the Conditional Offer"). This requires the POT to promise to pay up to \$8,000 it associates
 5 with training the POT should the POT resign before the completion of five years of
 6 employment with the City of Oakland as a police officer. The repayment provision is also
 7 contained in the collective bargaining agreement ("CBA") between the City and the union
 8 representing police officers.

9 In this case, the plaintiff was required to sign the Conditional Offer as a prerequisite
 10 to being hired. She resigned from the employment of the City approximately one and one-
 11 half years after being promoted from a POT to a regular police officer. As a result of the City
 12 assessed the plaintiff \$6,400.00 under the Conditional Offer. Plaintiff contends that in partial
 13 payment of the Conditional Offer, the City seized the plaintiff's vacation and overtime
 14 compensation checks and had threatened to sue plaintiff for the remaining balance due.
 15 Plaintiff has since paid, over her objection, the remaining balance due under the Conditional
 16 Offer, a sum slightly over \$5,300.00.

17 Plaintiff brought this action seeking a declaration on behalf of herself and others that
 18 the Condition Offer violates the anti-kickback provisions of the FLSA (29 C.F.R. §531.35)
 19 because the debt incurred under the Conditional Offer exceeds any wage she earned during
 20 any workweek, and indeed, her final workweek. Further, by seizing her final compensatory
 21 time off check, the City also violated the FLSA's requirement that such overtime in lieu be
 22 paid in full upon separation of the employment relationship. (See, 29 U.S.C. §207(o)(4)(B)).
 23 Plaintiff further has alleged this conduct is willful and should entitle her to liquidated
 24 damages according to proof.

25 The City contends that there has been no violation of the FLSA because it avers
 26 plaintiff was paid at least the statutory minimum wage in each pay period of her employment,
 27 and was properly compensated for any overtime she may have accrued as well.

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1 **3. LEGAL ISSUES**

2 The primary issue apparent to plaintiff and raised in the City's motion to dismiss is
 3 the validity of the repayment provisions under the FLSA. As noted by this Court, the Ninth
 4 Circuit has yet to rule on the legality of such a repayment provision. While the California
 5 Court of Appeal has recently opined that such a repayment obligation is lawful under the
 6 FLSA. That opinion cited this Court's earlier dismissal of the plaintiff's complaint. Further,
 7 that opinion is not final, and plaintiff's counsel -who also represents the appellant in that
 8 matter- has filed a petition for rehearing and has been instructed to file an appeal to the
 9 California Supreme Court.

10 **4. MOTIONS**

11 The City Attorney anticipates moving to dismiss any amended complaint and will file
 12 such motion within 30 days of the service of an amended complaint. The City Attorney
 13 contends plaintiff cannot allege a legally cognizable claim.

14 **5. AMENDMENT OF PLEADINGS**

15 Plaintiff has amended her complaint and filed an errata sheet to correct a
 16 typographical error on that pleading. The parties are awaiting the Court's decision on July
 17 17th concerning the motion to amend and the filing of the First Amended Complaint as
 18 corrected by the errata sheet on file in this matter.

19 **6. EVIDENCE PRESERVATION**

20 Plaintiff would ask that the City of Oakland retain all personnel and payroll records,
 21 and the records of any reimbursement received from the State of California or any other
 22 source for operating its police academy, and the cost calculations relied upon for the
 23 Conditional Offer's \$8,000 reimbursement claim.

24 **7. DISCLOSURES**

25 No formal disclosure pursuant to Rule 26 has been made at this time because, until
 26 this Court grants plaintiff leave to file here amended complaint, there is no operative
 27 pleading.

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1 **8. DISCOVERY**

2 No formal discovery has been commenced due to the pending motion for leave to
3 amend.

4 **9. CLASS ACTIONS**

5 Plaintiff contends that any representative action would arise under the FLSA's
6 collective action provisions, (29 U.S.C. §216(b)). Plaintiff is unaware how many putative
7 members might elect to "opt-in" to any such collective action. The City contends that this
8 matter would require class certification and that there would not be sufficient members for
9 a class. The City would consequently challenge plaintiff's efforts to certify a class on this and
10 other grounds.

11 **10. RELATED CASES**

12 There is no related federal action.

13 **11. RELIEF**

14 Plaintiff seeks monetary damages and declaratory relief.

15 **12. SETTLEMENT AND ADR**

16 Both parties and their counsel believe there is little prospect for settlement.

17 **13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

18 Plaintiff has consented to a magistrate judge, the City of Oakland has not consented.

19 **14. OTHER REFERENCES**

20 Plaintiff does not believe other references are appropriate given the legal issues
21 involved.

22 **15. NARROWING OF ISSUES**

23 The City contends that the issues can be narrowed by another motion to dismiss or
24 summary adjudication on stipulated facts. Plaintiff contends that the issues can be narrowed
25 only upon summary judgment, either with or without an agreed statement of facts.

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1 | 16. EXPEDITED SCHEDULE

Plaintiff believes that an expedited schedule is unnecessary, given the likelihood that the parties will be able to stipulate to a set of facts and file a dispositive motion.

4 | 17. SCHEDULING

5 Proposed dates for designation of experts, cutoff of discovery, dispositive motions,
6 pretrial conference and trial to be determined.

7 | 18. TRIAL

8 Plaintiff requests a jury trial if this case is not resolved by dispositive motions,
9 anticipated length of trial is two days.

10. 19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS

11 Plaintiff has not filed the Certification of Interested Entities or Persons. Plaintiff
12 believes that resolution of this case will affect other lawsuits filed by the City of Oakland
13 against officers similarly situated to plaintiff.

14 | Dated: July 9, 2008

~~JON WEBSTER
Attorney for Plaintiff
COURTNEY GORDON~~

18 || Dated: July 9, 2008

~~RACHEL WAGNER
CHRIS KEE
Deputy City Attorneys for Defendant
CITY OF OAKLAND~~